

PRACTICE GUIDELINES
for
Ensuring Adequacy of Care
When a Parent Dies



Ministry of Children and Family Development
Child and Family Development Division

August 2002

DOC
BC
C50422
D:P7C37
2002
c.3



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Introduction

These practice guidelines provide direction for child protection workers to assess the adequacy of a child's care following the death of the child's parent or parents. They are for use where a report is received that a parent has died and there are concerns about the safety and well-being of the child.

What are practice guidelines?

Practice guidelines provide recommended procedures to help social workers meet the expectations in policy, child protection standards, and guardianship standards that apply in specific child protection situations. Unlike practice standards, compliance with practice guidelines is not mandatory.

Legislation and practice standards that apply to these practice guidelines

These practice guidelines are to be interpreted and administered so that the safety and well-being of children are the paramount considerations and in accordance with the guiding principles and service delivery principles of the Child, Family and Community Service Act. When assessing the adequacy of care a child is receiving following the death of a parent, the needs and interests of others involved with the child are always secondary to the safety and well-being of the child.

Practice Standards for Child Protection

All relevant standards as set out in *Practice Standards for Child Protection* apply when a report is received about the death of a parent or parents. Of particular relevance are Practice Standards #7 to #19 (pages 12–29 of *Practice Standards for Child Protection*), which cover the assessment and investigation of child protection reports.

Legislated guardianship provisions

Where it is necessary following the death of parent to take on guardianship responsibilities for the child, provisions are available under the *Child, Family and Community Service Act* (CFCSA) and the *Family Relations Act* (FRA). These provisions are described on pages 8 and 9.

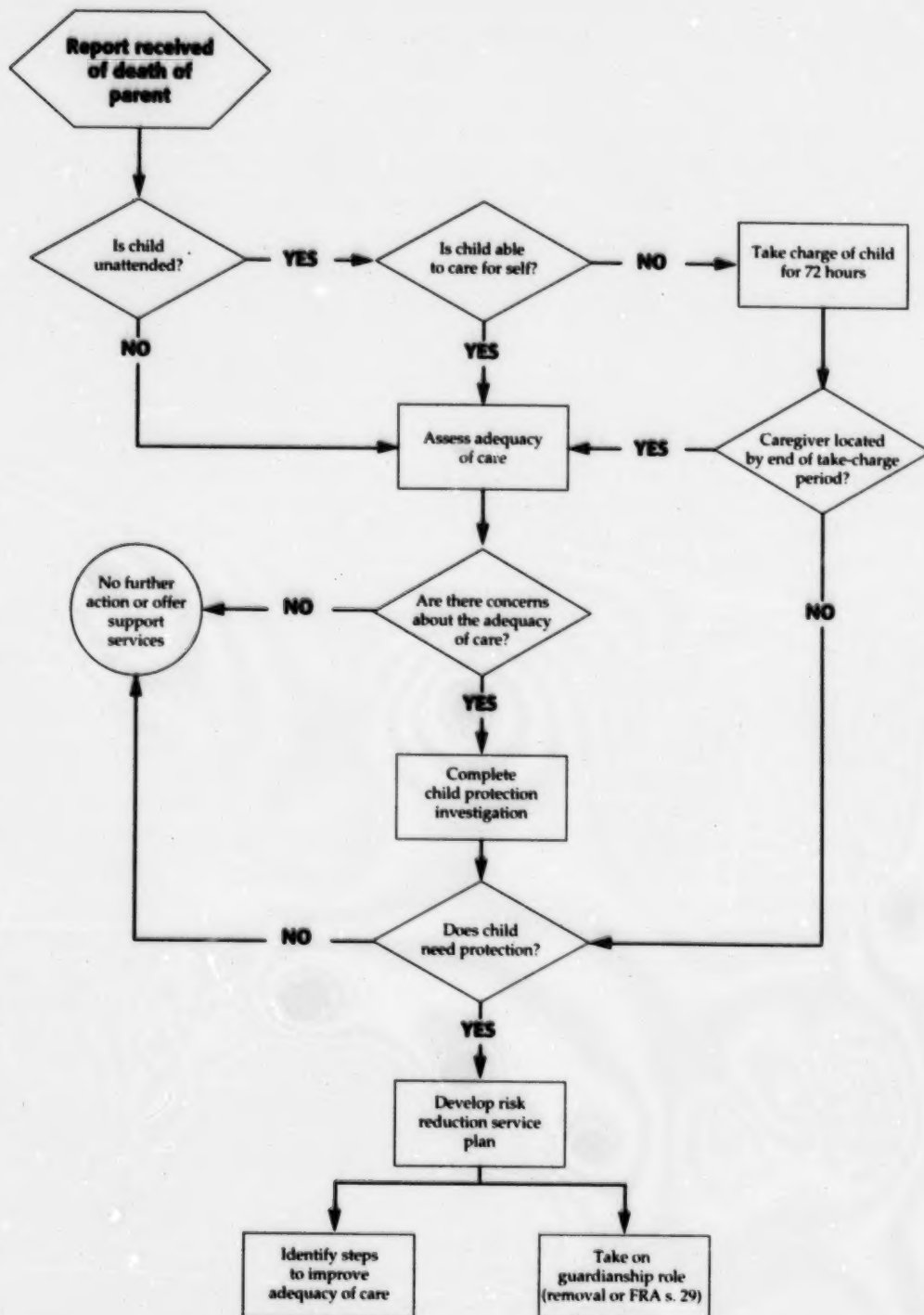
It is recommended in these guidelines that sections 13 (1) (j) and 30 of the CFCSA be used rather than section 29 of the FRA. Section 13 (1) (j) of the CFCSA provides a clearer framework for practice and allows the social worker to apply for a court order having a clear beginning and end point.

How these practice guidelines fit within the BC Risk Assessment Model

The procedures described in these practice guidelines are based on the British Columbia Risk Assessment Model. They would normally be used on receipt of a report that a parent has died. The assessment of the adequacy of the child's care is completed in order to make Risk Decision #1 (that is, whether or not to investigate).

The outcome of Risk Decision #1 will determine the remainder of the case flow. An overview of the procedure is shown in the flow chart on the next page.

Overview of Procedure for Ensuring Adequacy of Care When a Parent Dies



Assessing a report that a parent has died

You may learn either as the result of a child protection report or through ongoing involvement with a family that a parent or parents have died and there is some concern about whether the child is being adequately cared for.

As with all child protection reports, the first step is to assess the report. The purpose of this assessment is to determine whether the child is safe and whether to proceed to an investigation (Risk Decision #1).

Below are the most important steps in assessing the report. Refer to *Practice Standards for Child Protection*, pages 12–16 for a detailed description.

1. **Gather as much information as possible about the child and the family in order to reach a decision about whether the child is receiving adequate care.**

The information you gather should help you:

- determine who has care of child
- determine whether the child is aboriginal and whether there is an aboriginal organization that should be involved in looking after and planning for the child

2. **Complete a prior contact check and register the intake**

Even though a PCC related to the now-deceased parent may be of limited usefulness, it may reveal important information about the child's background. A PCC should also be completed for anyone who is now or may in the future be caring for the child.

3. **Determine the speed of assessment**

The speed of assessment is affected by whether or not the child is unattended following the death, and by the child's age.

4. **Determine whether the child's care is adequate**

In order to determine whether the child's care is adequate:

- visit the home where the child is presently living to be sure conditions are appropriate for a child of this age and developmental level
- see and interview the child to obtain the child's view of the situation
- speak to others involved with the child and family
- determine whether someone is in the process of or willing to acquire legal guardianship of the child

Once you have all the information you need, use the criteria on the next page to decide whether the child's care is adequate.

5. **Make risk decision #1 whether to investigate**

If you have doubts or concerns about the child's safety and well-being, you must proceed to an investigation (refer to child protection practice standard 10). If you are uncertain about whether to investigate, discuss the situation with your supervisor.

If the child is unattended

Child who is old enough to live independently

If a child is unattended but appears to be old enough to live independently:

- find out the child's views on the possibility of living independently
- if the child wants to live independently, offer any support services that might help the child to do so
- if the child does not want to live independently, consider the child's views about who, if anyone, he or she would like to live with

Child who is too young to live independently

In the case of a child who is unattended and who is too young to live independently, consider which of the following options is most appropriate:

- contact a surviving parent, relative or other person who is over the age of 19 to look after the child
- take charge of the child under section 25 of the CFCSA for a period of up to 72 hours, or
- take on a guardianship role in relation to the child (see Taking a Guardianship Role on page 8)

If you take charge of the child under section 25 of the CFCSA, within the 72-hour take-charge period you must attempt to contact a surviving parent, or a relative or other person known to the child who is over the age of 19 to look after the child. If a suitable person has not been found by the end of the 72 hours, and no other less disruptive measure is available, you may take on a guardianship role in relation to the child (see Taking a Guardianship Role on page 8).

A Child's Care is Adequate When:

- a child young enough to need a caregiver has a caregiver who is 19 years of age or older
- appropriate to age and developmental level, the child expresses the view that he or she feels safe and cared for in the present environment
- the physical environment in which the child is being cared for is safe for a child of this age and developmental level
- the caregiver understands the needs of a child of this age and developmental level
- if the child is aboriginal, the designated representative of the child's band or aboriginal community has been contacted (see Schedules 1 and 2 of the CFCS Regulations) and steps are being taken to ensure the child is aware of and has access to his or her aboriginal culture
- the child's basic needs, including needs for proper nutrition, clothing, sleep, education and nurturing, are being met
- any special needs the child has, including needs for special health measures or treatments, are being met
- appropriate to the child's age and developmental level, the child is receiving assistance in dealing with the loss of a parent or parents, and
- there are no indications that the child is being physically or sexually abused or exploited

If care is adequate

If your assessment reveals that adequate arrangements have been made for the child's care, neither the CFCSA nor the FRA requires you to intervene when a parent or parents die. In these cases, you may have no role at all or you may offer support services such as:

- respite care
- homemaker services
- parent or equivalent training
- referral to grief and loss counselling
- referral to family preservation counselling

You may advise a relative or other person who is making adequate provision for the child's care that he or she may want to apply to be guardian of the person of the child under the FRA, or may wish to apply to adopt the child under the *Adoption Act*.

The advantage of making one of these applications is that it gives legal certainty to the person's role with respect to the child, and ensures that some other person cannot come along and challenge the person's legal right to care for the child.

However, the absence of a guardianship or adoption order in favour of the person providing adequate care for the child is not in itself a protection concern.

If the person is interested in applying to be guardian of the child, suggest that the person consult with a lawyer.

In the case of a dispute over who will care for the child

In some cases, more than one relative, including a surviving parent or other person, may want to care for a child whose parent or parents have died.

Unless you have concerns that the child is not being adequately cared for during the course of this dispute, do not become involved in the dispute.

If care is inadequate

If your assessment reveals that the child's care is inadequate, or you have concerns about the child's safety and well-being, you must investigate. Refer to *Practice Standards for Child Protection* for direction on when to investigate and the required steps in the investigation.

An investigation following the death of a parent proceeds as for any other child protection investigation. The following are some of the special considerations that must be made when a parent has died.

1. See and interview the child

If you have not already done so, see and interview the child as soon as possible. Refer the child to grief and loss counselling as appropriate to the child's age, cultural background and apparent need. If the child is old enough, ask the child where he or she would like to live.

- 2. See and interview the parent, if any, or the person looking after the child**
Use this interview to determine whether the person caring for the child is dealing appropriately with the child's grief and ensure the person understands the needs of the child and is meeting those needs.
- 3. Make risk decision #3 to assess the child's immediate safety**
If the child is too young to live independently and is unattended, take immediate steps to protect the child.
- 4. Make risk decision #4 to decide whether the child needs protection**
If as a result of your assessment and investigation you conclude that the child needs protection, complete a comprehensive risk assessment as set out in the Risk Assessment Model for Child Protection in British Columbia.

Developing a risk reduction service plan

If child is found to need protection, you must develop a risk reduction service plan to ensure care is adequate to ensure the child's safety and well-being.

Taking steps to make care adequate

In the difficult and stressful circumstances surrounding the death of a parent, the person caring for a child may not immediately provide care that is adequate.

When your assessment reveals that care is inadequate, and before deciding to take on a guardianship role, consider whether other steps might be taken to raise the standard of care to an adequate level. As long as the child's immediate safety is not compromised in the meantime, the type of steps that might be taken include:

- requiring the person to take steps to improve the physical conditions in the home so that it is safe and appropriate for the child's age and developmental level
- explaining to the person caring for the child how the care being provided is inadequate, and allowing the person an opportunity to fix the inadequacy; and
- advising the person that financial assistance may be available to them to help them to care for the child, and assist them to obtain that financial assistance.

You may also offer support services to raise the standard of care to an adequate level, including:

- respite care
- homemaker services,
- parent or equivalent training
- referral to grief and loss counselling
- referral to family preservation counselling

If you determine that the child needs protection but a supervision order would be adequate to protect the child, apply to the court for a supervision order under section 29.1 of the CFCSA (see page 23 of *Court Procedures for Child Protection*).

Taking a guardianship role

In cases where support services or other steps are not adequate to raise the standard of care to an adequate level, it may be necessary to take on guardianship responsibilities.

Both the CFCSA and the FRA have provisions designed to allow the social worker to take on a guardianship role in the situation where a child's parent dies and inadequate arrangements are made for the child's care.

Where application of the risk assessment model reveals that the child needs protection and the director needs to take on guardianship responsibility, the following legislated options for intervention are available.

CFCSA

Section 13 (1) (j) of the CFCSA provides that a child needs protection *if the child's parent is dead and adequate provision has not been made for the child's care.*

Section 30 (1) of the CFCSA states:

- (1) *A director may, without a court order, remove a child if the director has reasonable grounds to believe that the child needs protection and*
- (a) the child's health or safety is in immediate danger, or*
 - (b) no other less disruptive measure that is available is adequate to protect the child.*

If a less disruptive measure is available and adequate to protect the child, you must use it rather than remove the child.

The use of section 13 (1) (j) of the CFCSA is recommended in most situations because it provides a clearer framework for practice and allows you to obtain a court order having a clear beginning and end.

FRA

Section 29 of the FRA also has a mechanism to allow the director to assume some guardianship responsibility in the event of death of a parent or parents. The relevant part of this provision reads as follows:

- (3) *If a child otherwise has no guardian or if the guardian appointed is dead, refuses or is incompetent at law to act,*
- (a) the director under the Child, Family and Community Service Act is guardian of the person of the child,*
 - (b) the Public Trustee is guardian of the estate of the child, or*
 - (c) paragraphs (a) and (b) both apply,*

as circumstances require, unless a tribunal of competent jurisdiction otherwise orders.

This section does not apply "automatically" on the death of a parent or parents, but is used only "as circumstances require."

Although as explained above, section 13 of the CFCSA is the preferred option, if you believe the particular circumstances at hand would be better dealt with under the FRA, discuss the situation with your supervisor, and then contact the Legal Services Branch to discuss whether section 29 is appropriate in the circumstances.

In the case of a dispute over who will care for the child

In extreme circumstances, a dispute over who will care for the child may become so aggravated as to cause the child to need protection on the ground of emotional harm under section 13 (1) (e) of the CFCSA. In this circumstance, you may need to remove the child and place him or her with a relative or unrelated foster parent.

Sometimes, one or more of the people wanting to care for the child may apply for guardianship of the child under the FRA or to adopt the child under the *Adoption Act*. If you have reason to believe that an applicant is not able to provide adequate care for the child, you may decide to take a position in the custody application under the FRA or on the adoption application under the *Adoption Act*. Consult contract legal counsel about these proceedings.